FC 2001-006342 03/02/2006

CLERK OF THE COURT

HONORABLE EILEEN WILLETT

D. Monroe
Deputy

FILED: 03/09/2006

IN RE THE MARRIAGE OF

CYNTHIA LEE THIMMESCH TERI D MCCALL

AND

PETER ALLAN THIMMESCH PETER ALLAN THIMMESCH

11337 STONEHOUSE PLACE POTOMAC FALLS VA 20165

JOHN J TOMA PH D

2345 E THOMAS RD STE 275

PHOENIX AZ 85016

EXPEDITED SERVICES-CCC

RONN LAVIT PH D

1130 E MISSOURI STE 570

PHOENIX AZ 85014

## ORDERS ENTERED BY THE COURT; RULING ON UNDER ADVISEMENT

On April 19, 2005, Mother filed her Petition for Order to Show Cause Re: Modification of Custody. Father was served May 17, 2005. Father filed his Response on January 9, 2006. On November 8, 2005, Mother filed her Petition for Contempt. All issues raised were consolidated for hearing. Evidentiary Hearing was held January 10, 2006. The matter was deemed submitted for decision.

The Court has considered the testimony of the witnesses, exhibits entered into evidence, the legal file, and all information presented. The Court issues the following additional findings and orders:

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#### JURISDICTION:

The Court finds that at least one of the parties has been domiciled in the state of Arizona for more than 90 days immediately preceding the filing of the Petitions. The Court further finds that the minor children who are the subject of this action have resided in Arizona with a parent for at least six consecutive months or more prior to the commencement of the action such that Arizona remains the home state of the children vested with jurisdiction to make a child custody determination pursuant to A.R.S. §25-1031(A)(1).

#### **CUSTODY:**

The parties were divorced by Decree of Dissolution entered April 11, 2002. They have two children of their marriage: Andrew Bruss Thimmesch, born June 3, 1993, and Rebecca Palen Thimmesch, born February 27, 1996. The Court awarded the parties joint legal custody of their children, designated Mother as primary residential parent, and granted Father access time. Mother was further granted final decision-making authority on medical and education decisions regarding the children.

Mother seeks to modify legal custody from joint legal custody to sole legal custody to Mother. She has been unable to discuss educational and health care issues with Father. She presented testimony that Father is grandiose, actively acts to alienate the children from Mother, contradicts and undermines her decisions to the detriment of the children's physical health and psychological well being, and harasses and intimidates Mother. Currently, Andrew has been diagnosed with ADHD with oppositional defiant disorder and asthma and was prescribed medication and counseling. Prior to Evidentiary Hearing, Father refused to recognize the child's diagnosis, failed to administer his medication, derogated the child's counselors to the child, and encouraged noncompliance of the child. In addition, Father discusses adult court-related issues with the children. In the past Father has disputed his son's broken collarbone and Andrew's ADD diagnosis. Father also allowed Becca to remove a cast from her arm despite immobilization orders.

Pursuant to the recommendation of the Family Court Advisor, Dr. Toma, this Court ordered on November 23, 2004 that Father participate in a full forensic psychological evaluation. On June 7, 2005, the Court amended its order to allow Father to be seen by a psychologist local to Father. Father did not comply with the Court's order. As of the date of the Evidentiary Hearing, January 10, 2006, Father still had not participated in a full forensic psychological evaluation.

The parties did participate in a custody evaluation with Brian Yee, Ph.D. Dr. Yee authored a report dated January 3, 2006. Father's psychometric testing produced a profile indicating elevated scales associated with hypo manic behavior and thinking, expansiveness, grandiosity, lability, and irritability. Dr. Yee observed significant dysfunctional communication Docket Code 023

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between the parties. He noted that Father was uniformly critical of Mother's parenting and decision-making and was also critical of physicians, psychologists, and dentists seen by the children. Father did not deny making derogatory statements about the children's therapists to the children. Father presented as hyper-verbal and rationalized his hostility when he became frustrated. Dr. Yee corroborated Mother's difficulties in communicating with Father and recommended Mother be designated as decision-maker.

Father testified that he now is in agreement with Andrew's ADHD with oppositional defiant disorder diagnosis. He believed Mother had not had the child comprehensively evaluated. He disputes Mother's care of Andrew, not Becca. He stated that both parents should utilize the Family Court Advisor and continue to make joint decisions. Father expressed that the checks and balances afforded through joint legal custody are helpful. He acknowledged a prior history of anger toward Mother and threatening behavior, but believes such behavior ceased in 2002. He agrees that Mother should be final decision-maker, but requests that there be discussion between him and Mother prior to final decision. Father suggested co-parenting counseling.

The Court finds that there has been a substantial and continuing change in circumstances since the Decree of Dissolution was entered in 2002. The parents have demonstrated a past, present, and future inability to cooperate in decision-making about the children to the extent required by an order of joint custody. Father has engaged in a pattern of behavior that has sabotaged Mother's decision making and adversely affected the physical and emotional well-being of the children. Father has refused to participate in a psychological evaluation as ordered, and his mental health is at issue based upon reports reviewed. A joint legal custody order is not feasible for the parties and has negatively impacted the children. Mother has not requested a reduction in parenting time for Father and has been final decision-maker for the children. Her decisions have been sound. Father harassed Mother, alienated the children from Mother, interfered with the children's medical and psychological treatment, failed to comply with Court orders, and negatively impacted the children's adjustment to home, school, and community. Father's desire to share joint legal custody is influenced by issues unrelated to the best interests of his children.

The Court has considered all relevant factors including factors set forth in A.R.S. §25-403 and finds that an award of sole legal custody to Mother is in the best interests of the minor children.

IT IS ORDERED awarding Cynthia Lee Thimmesch sole legal custody of the parties' minor children: Andrew Bruss Thimmesch born June 3, 1993, and Rebecca Palen Thimmesch, born February 27, 1996.

Mother shall remain primary residential parent. Prior orders regarding Father's access time are affirmed contingent upon Father's support and compliance with medical and psychological treatment for the children as determined by the children's attending physicians, Docket Code 023

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mental health providers, and Mother, and educational requirements as determined by the children's teachers as well as Mother.

IT IS FURTHER ORDERED affirming prior orders regarding the Family Court Advisor.

#### **CONTEMPT**:

The Court finds that a valid order for a psychological evaluation has been issued. The Court further finds that Father was well aware of the order and had the financial ability to comply with the Court's orders in a timely manner. Father has consistently failed to do so. Father's failure to provide requested psychological information through the ordered evaluation negatively impacts the children and impedes the ability of the Family Court Advisor to assist the parties.

IT IS THEREFORE ORDERED suspending Father's parenting time pending compliance with the Court's order modified as follows:

IT IS FURTHER ORDERED that Father participate in and successfully complete all psychological testing recommended by Dr. Toma.

IT IS FURTHER ORDERED appointing Ronn Lavit, Ph.D., to conduct said testing and a full psychological evaluation of Father. By separate mailing, the Court provides Dr. Lavit with a copy of the Court's November 23, 2004 minute entry delineating the nature of the recommended testing and defers to Dr. Lavit for any further tests he deems appropriate. Father shall be solely responsible for the costs of his evaluation. The matter shall be fully set forth by way of separate minute entry.

Upon compliance with the Court's order herein, Father shall file a notice of completion with the Clerk of the Court with attached verifying documentation, a copy to counsel, and a copy to the Court.

IT IS FURTHER ORDERED that Father participate in and complete any recommended treatment by Dr. Lavit as set forth by Dr. Lavit. All out-of-state providers shall be approved by Dr. Lavit or the Family Court Advisor. Unless contraindicated by Dr. Lavit, Father's access time may resume upon completion of the full psychological evaluation with Dr. Lavit and the filing of the Notice of Completion with attached verifying reports.

#### **ATTORNEY'S FEES:**

The Court has considered the financial resources of both parties in accordance with A.R.S. § 25-324, and good cause appearing,

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IT IS FURTHER ORDERED awarding Mother her reasonable attorney's fees and costs incurred herein.

IT IS FURTHER ORDERED that counsel for Mother shall file a *China Doll* affidavit within 30 days of the filing of this order.

#### **EXPEDITED SERVICES:**

IT IS FURTHER ORDERED referring the parties to Expedited Services for arrearage calculations regarding child support, spousal maintenance, and unreimbursed medical expenses, if any.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HONORABLE EILEEN WILLETT

JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: http://www.superiorcourt.maricopa.gov/ssc/sschome.html.